

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

RUSSELL GAITHER,

Plaintiff,

vs.

NATHAL DEAL, Commissioner; MR. PHILBIN, Warden; MRS. HARVEY, Deputy Warden; MRS. DORSEL, Nurse; MRS. VXZERRO, Nurse; MRS. BANKS, Nurse; and JOHN DOE, all nurses unknown at this time, et. al.;

Defendants.

4:21CV3063

MEMORANDUM AND ORDER

This matter is before the court on Plaintiff Russell Gaither's Motion for Leave to Proceed in Forma Pauperis ("IFP"). (Filing 2.) As stated in the Prison Litigation Reform Act ("PLRA"), a prisoner cannot

bring a civil action . . . or proceeding [IFP] if the prisoner has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action . . . in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

28 U.S.C. §1915(g).

The court takes judicial notice that the United States District Court for the Southern District of Georgia has previously determined that three or more federal court cases brought by Plaintiff, while a prisoner, were dismissed as frivolous or for failure to state a claim. *See, e.g., Gaither v. Georgia*, No. 6:19-CV-49, 2020 WL 261236 (S.D. Ga. Jan. 16, 2020), *report and recommendation adopted*, No.

6:19-CV-49, 2020 WL 762854 (S.D. Ga. Feb. 14, 2020) (identifying at least three civil actions that were dismissed and constitute strikes under § 1915(g) and listing four additional cases where Plaintiff was identified as a “three-striker”); *Gaither v. Epps*, No. 1:16-CV-103, 2016 WL 4445264 (S.D. Ga. Aug. 19, 2016), *report and recommendation adopted*, No. 1:16-CV-103, 2016 WL 6272384 (S.D. Ga. Oct. 25, 2016) (identifying strikes and dismissing based on three strikes rule).

In light of the foregoing, the court will give Plaintiff 30 days in which to show cause why this case should not be dismissed pursuant to the provisions of 28 U.S.C. 1915(g). In the alternative, Plaintiff may pay the full \$402.00 filing and administrative fees. In the absence of good cause shown, or the payment of the necessary fees, this action will be dismissed.

IT IS THEREFORE ORDERED:

1. Plaintiff has 30 days to either show cause for why this case should not be dismissed pursuant to 28 U.S.C. § 1915(g) or pay the court’s \$402.00 filing and administrative fees.

2. The clerk’s office is directed to set a pro se case management deadline in this matter with the following text: **April 19, 2021**: deadline for Plaintiff to show cause or pay fees.

Dated this 18th day of March, 2021.

BY THE COURT:


Richard G. Kopf
Senior United States District Judge